

Review to examine the scope and application of the industrial manslaughter provisions in the *Work Health and Safety Act 2011*

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The Honourable Grace Grace MP
Minister for State Development and Infrastructure
Minister for Industrial Relations
Minister for Racing
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City East Queensland Qld 4002

By email: industrialrelations@ministerial.qld.gov.au

Dear Minister,

REVIEW OF THE WORK HEALTH AND SAFETY ACT 2011 REGARDING INDUSTRIAL MANSLAUGHTER

Queensland was the first Australian jurisdiction to introduce industrial manslaughter into the *Work Health and Safety Act 2011* – its version of the national harmonised work health and safety laws - in 2017.

In 2020, Queensland's Office of the Work Health and Safety Prosecutor successfully prosecuted the country's first industrial manslaughter case.

Against that backdrop, and consistent with Recommendation 31 of the recent review into the *Work Health and Safety Act 2011*, I am pleased to present you with my independent review of our state's industrial manslaughter laws.

Acting Senior Prosecutor Mr Jordan O'Hanlon-Rose assisted me.

28 industry, worker, affected person and other representative bodies were consulted. The various submissions I received were of great assistance in consolidating my findings.

I recommend amendment to the industrial manslaughter laws to:

- Include bystanders (or individuals) whose death is caused by the negligent conduct of persons conducting businesses or undertakings and senior officers;
- Remove the words "for the business or undertaking" from the elements of the industrial manslaughter offence provisions to clarify that multiple parties (in what I have referred to as a contractual chain) can be held accountable; and
- Introduce alternative verdict provisions to allow triers of fact to return a verdict for a category 2 offence if not satisfied beyond a reasonable doubt of industrial manslaughter.

In undertaking this review of industrial manslaughter laws, and as the independent Work Health and Safety Prosecutor, I am grateful for the continued opportunities to contribute to the maintenance and modernising of Queensland's comprehensive work health and safety framework.

Yours sincerely



Simon Nicholson
Work Health and Safety Prosecutor
Office of the Work Health and Safety Prosecutor

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Introduction

In October 2017 Queensland was the first jurisdiction in Australia to introduce the crime of industrial manslaughter into its *Work Health and Safety Act 2011* (QLD WHS Act). Two industrial manslaughter cases have been successfully finalised since then – including Australia’s first conviction for industrial manslaughter in 2020.

The QLD WHS Act was introduced in 2011 as part of the harmonised work health and safety laws in Australia.

On 18 August 2022 the Minister for Education, Minister for Industrial Relations and Minister for Racing, the Honourable Grace Grace, announced a five-yearly review into the WHS Act. As part of that review, the crime of industrial manslaughter was examined.

The final report of the review was published on 21 December 2022.

Recommendation 31 stated:

That the Minister consider establishing a review to examine the scope and application of the industrial manslaughter provisions to determine if amendments are warranted.

On 17 October 2023 the Minister requested me to undertake the review.

I was asked to report to the Minister by 2 February 2024.

I am the current Work Health and Safety Prosecutor (WHS Prosecutor) appointed pursuant to schedule 2, part 4 of the QLD WHS Act.

The Office of the Work Health and Safety Prosecutor (OWHSP) is similarly established pursuant to the same provisions. The role and functions of the WHS Prosecutor, and of the OWHSP, are independent; that is, in performing the functions and exercising the powers as WHS Prosecutor, I am not under the control or direction of the Minister.

Mr Jordan O’Hanlon-Rose is currently an Acting Senior Prosecutor in the OWHSP, and assisted me with this review.

It should be noted that this review has focused on Part 2A of the QLD WHS Act. There are comparable industrial manslaughter laws in other occupational safety and resources safety and health Acts in Queensland:

- *Coal Mining Safety and Health Act 1999*;
- *Electrical Safety Act 2002*;
- *Mining and Quarrying Safety and Health Act 1999*;
- *Petroleum and Gas (Production and Safety) Act 2004*; and
- *Safety in Recreational Water Activities Act 2011*.

The industrial manslaughter laws in the *Electrical Safety Act 2002* and the *Safety In Recreational Water Activities Act 2011* closely align with the *Work Health and Safety Act 2011*.

It is not intended to examine specific issues that may be particular to those other legislative instruments given the focus of the initial review of the QLD WHS Act. However, if any amendment to industrial manslaughter laws in the QLD WHS Act is considered, examination of other related legislation should also occur.

Scope

The scope of the review was as follows:

- The structure and scope of the current crime of industrial manslaughter in Part 2A of the Work Health and Safety Act 2011 (WHS Act).
- Comparison between the crime in Queensland, and other jurisdictions in Australia that have introduced industrial manslaughter laws subsequent to Queensland's laws coming into effect.
- Whether any amendments to Part 2A of the WHS Act are warranted including:
 - o Amendments to Part 2A to capture the death of bystanders at a workplace, in addition to workers.
 - o Whether the crime currently captures the actions of principal contractors, subcontractors, developers or procurers of services who engage workers at a workplace, or if amendment is necessary to clarify or capture the duties of those persons.
- Whether alternatives to the crime should be included, similar to alternative verdicts available for specific crimes in the *Criminal Code 1899*.

Submissions

Submissions were called from various industry, worker representative, regulatory and other groups.

A list of those groups invited to provide a submission is set out in Annexure "A".

A copy of the letter inviting submissions is set out in Annexure "B".

Submissions closed on 21 December 2023.

Recommendations from the findings of the review

Recommendation 1:

The industrial manslaughter laws should be amended to include bystanders.

Including bystanders (or individuals) would bring Queensland's industrial manslaughter laws in line with those in other jurisdictions in Australia. It would assist in achieving the objective of maintaining and strengthening the national harmonisation of laws relating to work health and safety, and facilitate a consistent national approach to work health and safety in Queensland.

Recommendation 2:

Removing the words "for the business or undertaking" from the industrial manslaughter provisions would clarify that multiple parties in a contractual chain can be charged with the crime.

Queensland's industrial manslaughter laws capture multiple persons conducting businesses or undertakings in a contractual chain for an industrial manslaughter crime provided there is evidence capable of establishing beyond reasonable doubt both negligence and causation in relation to each, as well as that the deceased worker was conducting work for the business or undertaking. An amendment removing the words "for the business or undertaking" would help remove any doubt.

Recommendation 3:

Alternative verdicts should be introduced.

An ability for a trier of fact to find an accused guilty of an alternative offence – being a category 2 offence – should be considered. Similar provisions have been enacted in some other jurisdictions. If the offence provision in section 31 of the QLD WHS Act was amended to include a category 1 offence for negligent conduct, then any amendment could include the ability for a trier of fact to also consider guilt for that offence.

The structure and scope of the current crime of industrial manslaughter in Part 2A of the *Work Health and Safety Act 2011* (WHS Act).

Background

Industrial manslaughter was introduced into the QLD WHS Act following the *Best Practice Review of Workplace Health and Safety Queensland* in 2017.¹

Industrial manslaughter is a crime triable on indictment.

Industrial manslaughter laws were considered in the *Best Practice Review*, along with the report “*They never came home—the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia*” published by the Senate Education and Employment References Committee in October 2018.²

Ms Marie Boland undertook a national review of the harmonised work health and safety laws around Australia which was published in February 2019.³ The review included a consideration of the crime as enacted in Queensland.

It is not intended to repeat the observations of the authors in those reviews and reports.

Current framework

Section 34C of the QLD WHS Act sets out the elements of industrial manslaughter that can be committed by a person conducting a business or undertaking (PCBU):

Industrial manslaughter—person conducting business or undertaking

(1) A person conducting a business or undertaking commits an offence if—

(a) a worker—

(i) dies in the course of carrying out work for the business or undertaking; or

(ii) is injured in the course of carrying out work for the business or undertaking and later dies;
and

(b) the person’s conduct causes the death of the worker; and

(c) the person is negligent about causing the death of the worker by the conduct.

Maximum penalty—

(a) for an individual—20 years imprisonment; or

(b) for a body corporate—100,000 penalty units.

Note—

See section 244 or 251 in relation to imputing to a body corporate or public authority particular conduct of employees, agents or officers of the body corporate or public authority.

(2) An offence against subsection (1) is a crime.

¹ *Best practice review of Workplace Health and Safety Queensland*

² [They never came home—the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia – Parliament of Australia \(aph.gov.au\)](https://www.parliament.gov.au/aph.gov.au)

³ Review of the model WHS laws: Final report <https://www.safeworkaustralia.gov.au/doc/review-model-whs-laws-final-report>

The definition of a PCBU is set out in section 5:

Meaning of person conducting a business or undertaking

(1) For this Act, a person conducts a business or undertaking—

- (a) whether the person conducts the business or undertaking alone or with others; and
- (b) whether or not the business or undertaking is conducted for profit or gain.

(2) A business or undertaking conducted by a person includes a business or undertaking conducted by a partnership or an unincorporated association.

(3) If a business or undertaking is conducted by a partnership (other than an incorporated partnership), a reference in this Act to a person conducting the business or undertaking is to be read as a reference to each partner in the partnership.

(4) A person does not conduct a business or undertaking to the extent that the person is engaged solely as a worker in, or as an officer of, that business or undertaking.

(5) An elected member of a local government does not in that capacity conduct a business or undertaking.

(6) A regulation may specify the circumstances in which a person may be taken not to be a person who conducts a business or undertaking for the purposes of this Act or any provision of this Act.

(7) A volunteer association does not conduct a business or undertaking for the purposes of this Act.

(8) In this section, volunteer association means a group of volunteers working together for 1 or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.

Section 34D sets out the elements of industrial manslaughter against a senior officer:

Industrial manslaughter—senior officer

(1) A senior officer of a person who carries out a business or undertaking commits an offence if—

- (a) a worker—
 - (i) dies in the course of carrying out work for the business or undertaking; or
 - (ii) is injured in the course of carrying out work for the business or undertaking and later dies; and
- (b) the senior officer's conduct causes the death of the worker; and
- (c) the senior officer is negligent about causing the death of the worker by the conduct.

Maximum penalty—20 years imprisonment.

(2) An offence against subsection (1) is a crime.

A senior officer is defined in section 34A as follows:

senior officer, of a person conducting a business or undertaking, means—

- (a) if the person is a corporation—an executive officer of the corporation; or
- (b) otherwise—the holder of an executive position (however described) in relation to the person who makes, or takes part in making, decisions affecting all, or a substantial part, of the person's functions.

Executive officer is defined in section 34A as follows:

executive officer, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

The negligent conduct must cause the death of a worker. The term "conduct" is defined in section 34A as follows:

conduct means an act or omission to perform an ac

The term "cause" is defined in section 34A(2) as follows:

For this part, a person's conduct **causes** death if it substantially contributes to the death.

The term worker is given a broad meaning in section 7 as follows:

Meaning of worker

(1)A person is a worker if the person carries out work in any capacity for a person conducting a business or undertaking, including work as—

- (a)an employee; or
- (b)a contractor or subcontractor; or
- (c)an employee of a contractor or subcontractor; or
- (d)an employee of a labour hire company who has been assigned to work in the person's business or undertaking; or
- (e)an outworker; or
- (f)an apprentice or trainee; or
- (g)a student gaining work experience; or
- (h)a volunteer; or
- (i)a person of a prescribed class.

(2)For this Act, a police officer is—

- (a)a worker; and
- (b)at work throughout the time when the officer is on duty or lawfully performing the functions of a police officer, but not otherwise.

(3)The person conducting the business or undertaking is also a worker if the person is an individual who carries out work in that business or undertaking.

In addition to the definition of worker in section 7, section 34A(3) of the QLD WHS Act states:

For this part, a reference to a worker carrying out work for a business or undertaking includes a reference to a worker who is at a workplace to carry out work for the business or undertaking, including during a work break.

Finalised prosecutions

- ***R v Brisbane Auto Recycling Pty Ltd & Ors (2020) 296 IR 327; [2020] QDC 113***: On 3 April 2020, Brisbane Auto Recycling Pty Ltd entered a plea of guilty to one offence contrary to s 34C.

The defendant company was an auto wrecking business located on Marshall Road in the Brisbane suburb of Rocklea. The company conducted the business of purchasing used motor vehicles for the purpose of resale, recycling and parts.

On 17 May 2019, a forklift driver engaged by the defendant company was operating a forklift to reposition cars at the delivery area of the Marshall Road workplace. Whilst the forklift was carrying a partial car body, another forklift approached from the workshop shed carrying a car body on one tine. To allow this forklift to pass, the first forklift operator allowed the car body it was carrying to drop uncontrollably, and the driver then proceeded to reverse the forklift. At the same time, another worker engaged by the defendant was also in the delivery area of the workplace, securing a load onto the tray of a tilt-tray truck. When the forklift driver reversed, the pedestrian worker was crushed between the rear of the forklift and the driver's side of the tilt-tray. The injured worker was taken to the Princess Alexandra Hospital by paramedics. He died on 25 May 2019, from the injuries he sustained.

The investigation into the incident by Workplace Health and Safety Queensland ('WHSQ') and Queensland Police revealed that Brisbane Auto Recycling Pty Ltd had no documented safety systems and that the driver of the forklift was unlicensed.

The defendant company was fined \$3 million. A conviction was recorded.

- ***R v Jeffrey Owen [2022] QDCSR 168***: On 25 March 2022, following a four-day trial in the Gympie District Court, Jeffrey Owen was convicted and sentenced for an offence of industrial manslaughter, contrary to section 34C.

The offence occurred at a premises in Gympie, where the defendant operated a business that involved the repair and maintenance of electrical items, including generators. On 3 July 2019, a generator was delivered to the business premises on a flatbed truck. The defendant used a forklift to remove the generator from the back of the truck. While moving the generator on the forklift, the generator fell from the tines and landed on another worker, resulting in his death. The worker was a friend of the defendant who was onsite and had been assisting the defendant in his efforts to move the generator.

The prosecution alleged that the defendant's conduct was negligent because:

- He was not licenced to operate a forklift;
- The business operated by him did not have any documented health and safety procedures, in particular, procedures concerning the use of the forklift to unload heavy equipment;
- The forklift had a lifting capacity that was inadequate for its use in unloading the generator;
- The defendant failed to make proper enquiries as to the weight of the generator;
- The generator was not designed to facilitate it being lifted by a forklift;

- The defendant failed to designate an exclusion zone preventing pedestrian ingress into the area where the unloading of the generator was to take place;
- The defendant failed to provide proper instruction, training or supervision to the other worker to ensure that he remained at a safe distance from the suspended generator;
- It became apparent during the attempted unloading process that the forklift's lifting capacity was inadequate for the task, however the defendant persisted, including while a worker was positioned to the rear of the forklift; and
- Safe, alternative methods of unloading the generator were available at low cost.

In finding the defendant guilty, the jury was satisfied that the defendant's conduct was negligent and that it caused the death of the worker on whom the generator fell.

The defendant was sentenced to 5 years imprisonment, suspended after having served 18 months' imprisonment, for an operational period of 5 years. A conviction was recorded.

Comparison between the crime in Queensland, and other jurisdictions in Australia that have introduced industrial manslaughter laws subsequent to Queensland's laws coming into effect.

Background

Every jurisdiction except New South Wales and Tasmania has an industrial or workplace manslaughter offence in their occupational health and safety legislation.

In jurisdictions that have adopted the harmonised WHS laws, the wording of each industrial manslaughter offence is slightly different. Some jurisdictions also provide for alternative verdicts, as well as different basis of criminal liability.

In Victoria, which has not adopted the harmonised WHS laws, the offence is known as workplace manslaughter.

Comparison of industrial manslaughter offence provisions in legislative frameworks across jurisdictions that have adopted the harmonised WHS laws.

Commonwealth

The *Work Health and Safety Act 2011* (Cth) was amended by the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth) to introduce industrial manslaughter into the Commonwealth harmonised WHS law. The offence commences on 1 July 2024.

The industrial manslaughter provision will, in summary:

- Make it an offence for a PCBU or an officer of a PCBU who have health and safety duties to intentionally engage in conduct that breaches a duty and which causes the death of an individual;
- Capture both reckless and negligent conduct that causes the death.

If a trier of fact is not satisfied that the person is guilty of industrial manslaughter, but is satisfied of an alternative offence (a category 1 or a category 2 offence), then the trier of fact may find the person guilty of that alternative offence.

A PCBU found guilty of industrial manslaughter is liable for a penalty of up to \$18, 000 000. An individual is liable to up to 25 years imprisonment.

Australian Capital Territory

Prior to the introduction of the crime in Queensland, the Australian Capital Territory (ACT) was the first jurisdiction in Australia to legislate industrial manslaughter – albeit not in occupational health and safety legislation - in the *Crimes Act 1900* (ACT).

In 2021, the *Work Health and Safety Act 2011* (ACT) was amended to include industrial manslaughter.⁴ The *Crimes Act 1900* (ACT) was amended to remove the crime from that Act.

Similar to the Commonwealth amendment, the ACT industrial manslaughter laws capture negligent and reckless conduct that causes the death of a worker or an individual when committed by a PCBU or an officer of a PCBU who has health and safety duties.

⁴ Division 2.6 of Part 2 of the *Work Health and Safety Act 2011* (ACT)

Further, and like the Commonwealth amendment, the ACT industrial manslaughter laws provide for alternative verdicts if a trier of fact is not satisfied beyond reasonable doubt that PCBU or officer has committed an industrial manslaughter offence, but is satisfied that they have committed a category 1 or category 2 offence within the ACT's harmonised WHS laws.

A PCBU found guilty of industrial manslaughter is liable for a penalty of up to \$16, 500 000. An individual is liable to up to 20 years imprisonment.

New South Wales

A Bill to introduce industrial manslaughter in New South Wales, the *Work Health and Safety Amendment (Industrial Manslaughter) Bill 2021* (NSW), lapsed in May 2022.

Currently, the *Work Health and Safety Act 2011* (NSW) does not contain a specific industrial manslaughter offence.⁵

On 19 October 2023 the New South Wales Government issued a media release stating that an industrial manslaughter Bill was intended to be introduced in NSW in the first half of 2024.⁶

South Australia

On 29 November 2023 the *Work Health and Safety (Industrial Manslaughter) Amendment Bill 2023* (SA) passed the South Australian Parliament. The Bill was to amend the *Work Health and Safety Act 2012* (SA) to include industrial manslaughter.

The new industrial manslaughter laws have not yet commenced.

The laws capture conduct by a PCBU or an officer of a PCBU who have health and safety duties and who causes the death of an individual (to whom health and safety duties are owed) through conduct that is reckless as to the risk to an individual or death or serious injury or illness, or conduct that is grossly negligent.

Like the Commonwealth and the ACT, there are alternative verdict provisions allowing a trier of fact to find a PCBU or officer of a PCBU guilty of a category 1 or a category 2 offence. There is also provision for a trier of fact to find an accused guilty of a category 3 offence.

A PCBU found guilty of industrial manslaughter is liable for a penalty of up to \$18, 000 000. An individual is liable to up to 20 years imprisonment.

⁵ A note to Division 5 of Part 2 of the *Work Health and Safety Act 2011* (NSW) states:

This Division sets out offences, and penalties for the offences, in relation to the health and safety duties imposed by Divisions 2, 3 and 4 of Part 2. In certain circumstances, the death of a person at work may also constitute **manslaughter under the Crimes Act 1900** and may be prosecuted under that Act. See section 18 of the *Crimes Act 1900*, which provides for the offence of manslaughter, and section 24 of that Act, which provides that the offence of manslaughter is punishable by imprisonment for 25 years.

⁶ <https://www.nsw.gov.au/media-releases/industrial-manslaughter-law-to-be-introduced-nsw>

Western Australia

On 31 March 2022 the *Work Health and Safety Act 2020* (WA) commenced, which not only adopted the harmonised WHS laws but included industrial manslaughter.⁷

Under Western Australia's industrial manslaughter laws, PCBUs and officers of PCBU⁸ who have health and safety duties and who engage in conduct that causes the death of an individual (to whom a health and safety duty is owed) in disregard of a likelihood of death or serious injury commit the offence.

Like other jurisdictions, there are alternative verdicts available. A PCBU or officer charged with an industrial manslaughter offence may be convicted of a category 1 offence, a category 2 offence, or a category 3 offence.

A PCBU found guilty of industrial manslaughter is liable for a penalty of up to \$10, 000 000. An individual is liable to 20 years imprisonment, and a fine of \$5, 000 000.

Northern Territory (NT)

The *Work Health and Safety (National Uniform Legislation) Act 2011* (NT) was amended to include an industrial manslaughter offence, which commenced on 1 February 2020.⁹

Under the NT's industrial manslaughter laws, PCBU⁸s and officers of PCBU⁸s who have health and safety duties to individuals, and intentionally engage in conduct – recklessly or negligently - that breaches a health and safety duty which causes the death of an individual to whom a health and safety duty is owed, can be found guilty of the offence.

An alternative verdict for a category 1 or a category 2 offence may be returned if a trier of fact is not satisfied beyond a reasonable doubt that the accused is guilty of industrial manslaughter, but is guilty of the alternative offence.

In the Northern Territory, a PCBU found guilty of industrial manslaughter is liable for a penalty of up to \$11, 440 000.¹⁰ An individual is liable to a penalty of imprisonment for life.

Tasmania

Whilst Tasmania has adopted the harmonised WHS laws in the *Work Health and Safety Act 2012* (Tas), there is no crime of industrial manslaughter in that jurisdiction. Manslaughter is otherwise a crime contrary to section 159 of the *Criminal Code Act 1924*.

Generally

It should be noted that there are specific exceptions – say for volunteers – and differences in some definitions of officers within each of the industrial manslaughter laws across the jurisdictions that have introduced them. It is not necessary to set out those differences for the purposes of this review as they do not affect any findings or recommendations.

⁷ Subdivisions 1 – 2 of Division 5 of Part 2 of the *Work Health and Safety Act 2020* (WA)

⁸ Section 4A of the *Work Health and Safety Act 2020* (WA) defines "officer" for the purpose of the Act.

⁹ Division 6 of Part 2 of the *Work Health and Safety (National Uniform Legislation) Act 2011* (NT)

¹⁰ This is based on a current penalty unit of \$176 (*Penalty Units Regulations 2010* (NT)), multiplied by 65 000 which is the number of penalty units expressed in the offence provision).

Whether any amendments to Part 2A of the WHS Act are warranted

Amendments to Part 2A to capture the death of bystanders at a workplace, in addition to workers

Current framework

Queensland's industrial manslaughter laws criminalise conduct by a PCBU or senior officer that is negligent and causes the death of a worker.

In all other jurisdictions that have introduced industrial manslaughter laws (or, in the case of South Australia and the Commonwealth, where industrial manslaughter laws will commence in the near future), the offence provisions refer to:

- Individuals;
- Individuals and workers; and
- Individuals to whom a health and safety duty (or, in the case of Victoria, an applicable duty) is owed.

In the *Best Practice Review of Workplace Health and Safety*, and in recommending the introduction of an industrial manslaughter offence, the report noted:

the Review believes that the drafting in Sections 45C and 45D of the *Crimes Act 1900* (ACT) is a relevant and appropriate reference point for the drafting of the proposed Queensland offences.¹¹

The Queensland industrial manslaughter laws have similarities to the Australian Capital Territory's now-repealed equivalents. They have remained the same since their enactment in 2017. Liability is limited to offending involving workers, and there are similar definitions of senior officers and executive officers as existed in the *Crimes Act 1900* (ACT).

Key Issues

Submissions received on whether Part 2A should be amended to include bystanders as well as workers were mixed.

Some strongly supported an amendment, noting that it would be consistent with the object of the QLD WHS Act, as set out in section 3(1)(a):

Object

(1)The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by—

(a)protecting workers **and other persons** against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from particular types of substances or plant

(emphasis added)

¹¹ *Best practice review of Workplace Health and Safety Queensland*, p 113.

It was contended that the deaths of bystanders are no less important than the deaths of workers. One of the examples given was an incident in Melbourne, Victoria, in 2013 where three members of the public died following a brick wall collapse on Swanston Street.¹² Applying the law in Queensland to the circumstances of that case, industrial manslaughter charges could not be proffered as the three persons who died were not workers.¹³

Submissions against an amendment expressed concern that the compliance expected of, and impact upon, small and medium enterprises would be disproportionate. It was contended that limiting the number of visitors to workplaces and reconsidering the extent of exclusion zones around their sites may be onerous.

Warning of the nuances in definition, it was contended by some that care needed to be taken in defining a 'bystander'.

A number of submissions noted that deaths of bystanders were already captured by the manslaughter provisions of the *Criminal Code Act 1899*.

Other contentions against amendment included:

- In mobile industries, where the boundaries of workplaces were “not contained neatly within, for example, an office or a theme park”, it would be difficult to determine who constituted a bystander.
- Industrial manslaughter provisions jeopardised equality in the law, as larger corporations are “less likely” to be prosecuted for worker’s deaths.¹⁴
- Including bystanders could present practical challenges in investigating and collecting evidence and attribution of liability.
- Workplace fatalities involving the death of bystanders could involve different dynamics and complexities to incidents directly impacting workers.
- Including bystanders could “dilute” the focus on the duty of care owed by employers to workers.

¹² Coroner’s Court of Victoria, Findings without inquest of State Coroner Judge Sara Hinchey into the deaths of Bridget Louise Jones, Alexander David Jones, Marie-Faith Chantal Abia Fawoo, 4 June 2018.

¹³ It should be observed that this is a factual example given regarding a consideration of whether industrial manslaughter could be alleged, as in the circumstances those who died were not workers. Charges of manslaughter were not proffered against anyone arising out of the incident, though there were charges instituted pursuant to the *Occupational Health and Safety Act 2004* (Vic) against various duty holders.

¹⁴ In support of this contention, the relevant submission referenced statistics in an article from the United Kingdom and stated that “most of [the UK] entities that have been successfully prosecuted have been smaller organisations”: <https://www.kingsleynapley.co.uk/insights/blogs/criminal-law-blog/review-of-recent-corporate-manslaughter-cases-deco-pak-bosley-mill-aster-healthcare>

Findings

As mentioned, there have been two successful industrial manslaughter prosecutions in Queensland since the introduction of the crime.

The industrial manslaughter laws are still relatively new. There is no data or available trends to suggest any significant problems arising out of the way the laws are currently drafted.

During the first reading speech of the *Work Health and Safety and Other Legislation Amendment Bill 2017* on 22 August 2017, the Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs, the Honourable Grace Grace, told the House:

Preventing work related fatalities and injuries is something that is universally supported. We all believe in being able to go to work and returning home safely. **Similarly, members of the public should not be exposed to risks to their health and safety as a result of the way a person conducts their business or undertaking. When a work related fatality occurs, there are immediate ramifications for families, friends, co-workers and witnesses to the incident.** I met with some of the families of the victims of the Eagle Farm tragedy. I spent time listening to their stories. I cannot imagine the grief they experienced. This has only strengthened my and this government's resolve to introduce reforms aimed at creating safe workplaces. I would again like to convey my deepest sympathies to the families and other people who were affected by the tragedies at Dreamworld and Eagle Farm last year and any other recent tragedies in the workplace. Sadly, there have been other work related fatalities in Queensland. **In introducing this bill the government is saying that one work related death is too many. We must always aim high and work together to prevent loss of life in our workplaces.**¹⁵

(emphasis added)

In other jurisdictions that have adopted the harmonised WHS laws, there has been a consistent approach to permit consideration of charging a PCBU or officer for an industrial manslaughter offence arising out of the fatality of a bystander or individual to whom a health and safety duty is owed. Western Australia, South Australia, and the Commonwealth are the three most recent jurisdictions to introduce industrial manslaughter laws. Each jurisdictions' laws tie the death of an individual to a health and safety duty owed to that person, placing the death within the context of the work health and safety legislative scheme and consistent with the harmonised law's objectives.

It is conceivable to envisage a situation, such as that contended in a submission received and as referred to earlier, where a bystander or individual dies as a result of negligent conduct at a workplace and there is a prima facie case, a reasonable prospect of conviction, and it is in the public interest to proceed. However, because that person was not a worker, the only recourse would be to a possible charge of manslaughter contrary to the *Criminal Code 1899*. This would seem inconsistent with the observations in the *Best Practice Review of Workplace Health and Safety Queensland*:

In terms of the design and statutory location of the offence, as previously stated, the Review considers the offence would be best placed in the WHS Act 2011 on the basis that it would send a clear message to PCBU's about the standard of safety required and the expectation on senior management to proactively manage health and safety risks. Additionally, the provisions under the WHS Act 2011 relating to the imputation of an individual's conduct to a corporation will ensure corporations are liable and reduce barriers to attributing criminal liability to a corporation in instances involving the most serious health and safety breaches.

In the 2018 *Review of the model WHS Laws*, it was noted:

...the Qld WHS Act is only relevant to the death of a 'worker' as defined in s 7 of the Act; it does not extend to third parties to the work relationship, such as clients, customers, visitors or neighbours—known as 'other persons' under the model WHS Act. Many high-profile industrial incidents impact on such people (for example, the deaths of four visitors to the theme park at Dreamworld in 2016). An industrial manslaughter offence must include the death of other persons at the workplace as well as workers.

¹⁵ Queensland Parliament. 2017. "Record of proceedings (Hansard)." August 22, 2017.

A noted concern for some groups was that any amendment would need to account for modern mobile workplaces as well as not placing further compliance requirements upon small to medium enterprises. That said, the QLD WHS Act already requires PCBUs to ensure – so far as is reasonably practicable – the health and safety of other persons (so, persons other than workers) is not put at risk from work carried out as part of the conduct of the PCBU.¹⁶ Expanding the offence provision to include the death of bystanders within the industrial manslaughter laws would not lead to any greater compliance requirement than already exists.

A simple amendment to address the death of bystanders would objectively maintain and modernise the national harmonisation of laws relating to work health and safety as well as facilitate a consistent national approach to industrial manslaughter offences in Queensland, noting the recent evolution of industrial manslaughter in other jurisdictions.¹⁷ Moreover, such an amendment would be consistent with what the Minister said when she introduced the 2017 Bill to the House to amend the QLD WHS Act to include industrial manslaughter laws in the first place, protecting workers as well as members of the public from negligent conduct of PCBUs and senior officers.

Section 34C of the QLD WHS Act could be amended as follows, with amendments in red:

Industrial manslaughter—person conducting business or undertaking

(1) A person conducting a business or undertaking commits an offence if—

(a) an individual to whom a health and safety duty is owed —

(i) dies in the course of carrying out work for the business or undertaking; or

(ii) is injured in the course of carrying out work for the business or undertaking and later dies;
or

(iii) dies (or is injured and later dies) as a result of a breach of the health and safety duty and

(b) the person's conduct causes the death of the individual; and

(c) the person is negligent about causing the death of the individual by the conduct.

Section 34D could be amended as follows:

Industrial manslaughter—senior officer

(1) A senior officer of a person who carries out a business or undertaking commits an offence if—

(a) an individual to whom a health and safety duty is owed —

(i) dies in the course of carrying out work for the business or undertaking; or

(ii) is injured in the course of carrying out work for the business or undertaking and later dies;
or

(iii) dies (or is injured and later dies) as a result of a breach of the health and safety duty and

(b) the senior officer's conduct causes the death of the individual; and

(c) the senior officer is negligent about causing the death of the individual by the conduct.

¹⁶ Section 19(2), WHS Act.

¹⁷ Consistent with an object of the WHS Act as set out in section 3(1)(h).

Whilst some other jurisdictions include recklessness as an available fault element of the offence, it is not proposed to invite consideration of amendment of the QLD WHS Act to change that fault element in this jurisdiction.

Recommendation 1:

The industrial manslaughter laws should be amended to include bystanders.

Whether the crime currently captures the actions of principal contractors, subcontractors, developers or procurers of services who engage workers at a workplace, or if amendment is necessary to clarify or capture the duties of those persons.

Background

Larger or multijurisdictional PCBUs can enter into complex contractual arrangements to undertake work which engages principal contractors, subcontractors, developers or procurers of services who engage workers at a workplace.

The document *WHS duties in a contractual chain: Factsheet* published by Safe Work Australia¹⁸ provides a useful oversight of how various contractual relationships fit within the model WHS framework. It observes:

Working with other PCBUs and shared WHS duties In a contractual chain there will be multiple PCBUs who share the same WHS duties. PCBUs who share duties must each discharge their duty to the extent to which they have the capacity to influence and control the matter (whether that matter is a work activity, workers or the workplace).

The PCBU with the most influence and control over a matter will be in the best position to manage the associated risks. Determining which person or persons have the capacity to influence and control the work depends on the circumstances at the time. For example, at a housing construction site, subcontractors have some capacity to directly manage the risks associated with their own work and the activities of any worker they engage to carry out the work. The head contractor will also be able to influence and control the way work is carried out, and how risks are managed, by coordinating and monitoring the work and ensuring risk control measures are implemented.

PCBUs at the top of the contractual chain can build work health and safety into contractual management and take the lead in coordinating work health and safety practices down the chain. These PCBUs have important responsibilities in seeking assurance that systems to ensure worker safety are in place along the contractual chain and are functioning effectively. For example, although a head contractor may not be present on a housing construction site, they must still ensure the work is being carried out safely. The head contractor should check the subcontractor's work procedures. The principal contractor (for construction projects over \$250,000) must obtain any safe work method statements (for high-risk construction work) to ensure risks associated with the proposed work are addressed, and then visit the site as necessary to verify the work is being carried out safely.

PCBUs, regardless of their place in a contractual chain, have a duty to consult, cooperate and coordinate activities with all other PCBUs who they share a duty with, so far as is reasonably practicable. This helps avoid unnecessary duplication of activities, prevent gaps in managing health and safety risks and ensure that everyone's WHS duties are met.¹⁹

Current framework

In the QLD WHS Act, and consistently throughout other jurisdictions that have adopted the harmonised WHS laws, the primary duty of care is owed by a PCBU. PCBU has a wide definition.

Sections 19(1) and 19(2) of the QLD WHS Act state that a PCBU must ensure so far as is reasonably practicable the health and safety of:

- Workers engaged or caused to be engaged by the PCBU;
- Workers whose activities in carrying out work are influenced or directed by the PCBU; and
- Other persons who may be at risk from work carried out as part of the conduct of the PCBU.

Section 19(5) requires a self-employed person to ensure, so far as is reasonably practicable, their own health and safety whilst at work.

¹⁸ *WHS duties in a contractual chain: Factsheet*. A copy is included at Annexure "C"

¹⁹ *Ibid*, p 7.

In Division 3 of Part 2 of the QLD WHS Act, there are further specific duties assigned to PCBUs:

- Involving management or control of workplaces: section 20;
- Involving management or control of fixtures, fittings or plant at workplaces: section 21;
- Designing plant, substances or structures: section 22;
- Manufacturing plant, substances or structures: section 23;
- Importing plant, substances or structures: section 24;
- Supplying plant, substances or structures: section 25; and
- Installing, constructing, or commissioning plant or structures: section 26.

A PCBU must comply with an approved code of practice: section 26A.

Division 4 of Part 2 of the QLD WHS Act ascribes particular duties to officers (section 27), workers (section 28) and other persons at the workplace (section 29).

Duties are not transferable (section 14) and a person may have more than one duty (section 15). More than one person can have a duty (section 16).

Key issues

Submissions received as part of this review considered whether specific reference to various duty holders at a workplace where an industrial manslaughter offence occurs should be incorporated into the QLD WHS Act, and whether the current legislative scheme would capture duty holders linked by a complex contractual chain in a prosecution for industrial manslaughter.

The majority's view was that the legislative provisions as they exist sufficiently capture all relevant duty holders, and that there is not enough evidence from cases to suggest there is a problem with the laws requiring amendment.

Findings

The primary duty of care rests with a PCBU to ensure, so far as is reasonably practicable, that risks to the health and safety of workers and other persons are eliminated (or, if they cannot be eliminated, minimised, so far as is reasonably practicable).

In doing so, the PCBU can have more than one duty, and more than one person can have a duty.

The QLD WHS Act as currently framed would sufficiently capture multiple PCBUs and individuals in a contractual chain for an industrial manslaughter offence, provided there was evidence capable of establishing beyond reasonable doubt both negligence and causation. That could be so where there is evidence of, say, a primary or principal PCBU:

- Omitting to ensure that a subcontracting party provides and maintains, so far as is reasonably practicable, safe systems of work;
- The system of work (or lack thereof) adopted was such that it could be considered criminally negligent;
- Such criminal negligence caused the death of a worker at the workplace.

A submission received by the review noted that the words *"carrying out work for the business or undertaking"* limits the application and scope of the industrial manslaughter laws, because it would need to be proven beyond a reasonable doubt that the worker died in course of carrying out work *for the PCBU charged*. Corporate structures could be arranged such that the legal effect was the deceased worker was not carrying out work for the PCBU.

There may be merit in such an observation, though, again, the proposition remains untested, and otherwise multiple duty holders can owe the same health and safety duty, and a single duty holder can owe multiple health and safety duties.

An amendment could be considered to remove those words from section 34C and 34D to assist in removing doubt.

Using the suggested amendment that would include the death of a bystander, additional amendments – set out in red – removing the words “for the business or undertaking” could read, in relation to section 34C:

Industrial manslaughter—person conducting business or undertaking

(1) A person conducting a business or undertaking commits an offence if—

- (a) an individual to whom a health and safety duty is owed —
 - (i) dies in the course of carrying out work ~~for the business or undertaking~~; or
 - (ii) is injured in the course of carrying out work ~~for the business or undertaking~~ and later dies; or
 - (iii) dies (or is injured and later dies) as a result of a breach of the health and safety duty and
- (b) the person’s conduct causes the death of the individual; and
- (c) the person is negligent about causing the death of the individual by the conduct.

Section 34D could be amended as follows:

Industrial manslaughter—senior officer

(1) A senior officer of a person who carries out a business or undertaking commits an offence if—

- (a) an individual to whom a health and safety duty is owed —
 - (i) dies in the course of carrying out work ~~for the business or undertaking~~; or
 - (ii) is injured in the course of carrying out work ~~for the business or undertaking~~ and later dies; or
 - (iii) dies (or is injured and later dies) as a result of a breach of the health and safety duty and
- (b) the senior officer’s conduct causes the death of the individual; and
- (c) the senior officer is negligent about causing the death of the individual by the conduct.

Indeed, if Recommendation 1 was accepted and an amendment enacted in the terms suggested, it would squarely address the issue of multiple party liability for industrial manslaughter, on the basis that multiple duty holders holding multiple health and safety duties could engage in conduct that negligently causes the death of an individual, whether or not the individual was a worker and whether or not they were carrying out work for a PCBU (but so long as a health and safety duty applied to them). There may be other considerations militating against bringing a charge of industrial manslaughter in those circumstances (such as the particular hierarchy of duty holders and whether any of them were specialist contractors engaged to do specialist work – see the discussion in *Baiada Poultry Pty Ltd v R* (2012) 246 CLR 92). Nevertheless, removing the words *for the business or undertaking* would assist in addressing the concerns both in the current legislative framework, and as part of any amendments.

Recommendation 2:

Removing the words “for the business or undertaking” from the industrial manslaughter provisions would clarify that multiple parties in a contractual chain can be charged with the crime.

Whether alternatives to the crime should be included, similar to alternative verdicts available for specific crimes in the Criminal Code 1899

Current framework

In Queensland, there are no alternative verdict provisions for the crime of industrial manslaughter under Part 2A of the WHS Act.

In the Commonwealth Bill amending the *Work Health and Safety Act 2011* (Cth),²⁰ section 30A(4) will permit a trier of fact to find an accused guilty of a Category 1 or Category 2 offence, so long as the accused has been afforded procedural fairness.²¹ There is no need for the original industrial manslaughter charges to have been commenced within the limitation period for a Category 1 or Category 2 offence.²² The amendments commence on 1 July 2024.

In the Northern Territory, under section 34D of the *Work Health and Safety (National Uniform Legislation) Act 2011* (NT), a broader scope for an alternative verdict is enlivened if the trier of fact is satisfied beyond reasonable doubt that the person committed the alternative offence. Proceedings must be commenced within the time limitation for the lesser offence to enliven an alternative verdict.

In the ACT, the alternative verdicts under section 34B of the *Work Health and Safety Act 2011* (ACT) mirror the provisions in the Northern Territory, but only provides for alternative Category 1 or Category 2 offences as alternatives and expressly requires procedural fairness.

In South Australia, under the new provisions recently passed for section 30A(3) of the *Work Health and Safety Act 2012* (SA), it expressly provides that an alternative verdict to industrial manslaughter may be returned if the trier of fact is satisfied the accused is guilty of a Category 1, Category 2 or Category 3 offence. This followed passing of the *Work Health and Safety (Industrial Manslaughter) Amendment Bill 2023* which is yet to commence. It is analogous to section 30A(2) of the *Work Health and Safety Act 2020* in Western Australia, but requires adherence to time limitations upon alternative verdicts.

In Victoria, the *Occupational Health and Safety Act 2004* (Vic) does not allow for alternative verdicts to be returned for workplace manslaughter under section 39G.

As noted, in NSW and Tasmania, industrial manslaughter laws have not been enacted.

Issues raised

From the submissions received, there was broad support for alternative verdicts in some form.

Concerns were raised about the operation of alternatives in circumstances where legal elements of the alternative offences were distinct from the elements comprising industrial manslaughter. Amendments which affirmed the statutory limitations for alternative offences were noted to be positive in ensuring matters were brought before the Courts expeditiously.

Some submissions suggested that prosecutions for industrial manslaughter must remain targeted and direct, with the possibility of amendment potentially signifying an unwarranted expansion of prosecution powers.

²⁰ *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* (Cth).

²¹ *Ibid*, Schedule 4, Part 1.

²² *Ibid*.

Findings

Natural alternatives to criminal offences exist under the *Criminal Code Act 1899* (Qld) within Chapter 61. The extent of natural alternatives is wide reaching, permitting natural alternatives to unlawful killings, assaults and violent offending, property offences, sexual offences, vehicle offences, dishonesty offences and offences relating to animals.

If a natural alternative is not expressly permitted, authority is provided to plead an alternative offence on the indictment by virtue of section 567(2), provided the offending is “*founded on the same facts or are, or form part of, a series of offences of the same or similar character or a series of offences committed in the prosecution of a single purpose.*”

Well-established case law governs technical offences whereby natural alternatives may be open. For example, a charge of unlawful wounding does not involve an element of assault and common assault is therefore not open on such a charge.²³ In relation to unlawful killings, a person charged with murder may be convicted of manslaughter notwithstanding that the evidence does not establish any of the wilful acts outlined in section 302(1) which, of importance, includes an act or omission done with reckless indifference to human life.

In *R v MBX* [2014] 1 Qd R 438; [2013] QCA 214, the appropriate circumstances for leaving alternatives verdicts to a jury was considered. At [49] it was noted:

“In summary, the duty to leave an alternative verdict to the jury depends upon the interests of justice, and the interests of justice are not determined by a request or the absence of a request by counsel to leave an alternative verdict. A request to leave an alternative verdict will not determine the matter if the alternative is not fairly open on the whole of the evidence. The interests of justice, including justice to the accused, may oblige a judge to leave an alternative verdict which is fairly open on the whole of the evidence in the absence of a request from defence counsel. The interests of justice, including the public interests that a guilty party is convicted of an alternative, lesser offence that is fairly open on the evidence, may oblige a judge to leave that alternative verdict despite a request from defence counsel that it not be left. The interests of justice are not determined by the tactical choices of defence counsel, acting on instructions, to “roll the dice”. The duty of a trial judge to ensure a fair trial does not mean that a trial judge will acquiesce in any request made by counsel...”

This passage raises a relevant consideration about whether natural alternatives should arise, namely, whether it is in the interests of justice, including justice to the accused and the public interest.

It also confirms that natural alternatives need not always be left, despite legislation which permits it.

Given developments in other jurisdictions across Australia, consideration should be given to introducing alternative verdicts into the QLD WHS Act.

²³ *R v Knutsen* [1963] Qd R 157.

A submission to the review relevantly contended that having regard to the elements of industrial manslaughter, there is no combination of the elements of the offence that could constitute a separate offence. In other words, it was contended that there is no charge that must be proved to prove the primary offence of industrial manslaughter.

There is some force to this contention. It would be addressed by careful wording of any amendment. The amendment suggested regarding the inclusion of bystanders would include reference to a breach of a health and safety duty such as that in section 19(2) of the QLD WHS Act. Therefore, if a trier of fact were satisfied beyond reasonable doubt of a failure to comply with that duty, and specific reference were made to also being satisfied that the failure exposed an individual to a risk of death or serious injury, then a category 2 offence could be made out.

An alternative verdict amendment to both section 34C and 34D could be worded as follows:

If in proceedings for an offence against subsection (1) a trier of fact not satisfied beyond a reasonable doubt of the prosecuted offence and

Is satisfied that the person:

- (a) held a health and safety duty; and
- (b) failed to comply with that duty; and
- (c) the failure exposed an individual to a risk of death or serious injury or illness

The person may be found guilty of a **category 2** offence.

Unlike in other jurisdictions with alternative verdicts, the suggested amendment does not include the trier of fact being satisfied beyond a reasonable doubt of a category 1 offence. There are reasons for this.

In the Commonwealth, ACT, South Australian, Western Australian and Northern Territory enactments or Bills, there is reference to industrial manslaughter being established upon either reckless or negligent conduct.

In Queensland, industrial manslaughter is proven upon a finding beyond reasonable doubt about *negligent* conduct only, and there is no proposal to consider amendments to sections 34C and 3D of the WHS Act to change the fault element. Category 1 charges capture reckless conduct without reasonable excuse that exposes an individual to a risk of death or serious injury. Section 16 of the *Work Health and Safety and Other Legislation Amendment Bill 2023* seeks to amend section 31 of the WHS Act to capture reckless as well as conduct engaged in with negligence without reasonable excuse that exposes an individual to a risk of death or serious injury.

The *Work Health and Safety and Other Legislation Amendment Bill 2023* has not been enacted as of the date of this review; however, if the offence provision in section 31 of the WHS Act was amended to include establishing a category 1 offence through negligent conduct, then an alternative to industrial manslaughter could be provided for a trier of fact to consider whether they were satisfied beyond a reasonable doubt of that offence.

An amendment to both section 34C and 34D on that basis could be framed as follows:

- (a) If in proceedings for an offence against subsection (1) a trier of fact:
- i. is not satisfied beyond a reasonable doubt of the prosecuted offence; and
 - ii. Is satisfied that the person:
 1. held a health and safety duty; and
 2. failed to comply with that duty; and
 3. engaged in conduct without reasonable excuse that exposed an individual to a risk of death or serious injury or illness; and
 4. engaged in the conduct with negligence

The person may be found guilty of a **category 1** offence.

For the avoidance of doubt, the **category 1** offence that the person may be found guilty of is *negligent conduct category 1*.

It is not recommended that Queensland adopt a limitation on the ability to return an alternative verdict if the proceedings were brought outside the time limit for the alternative offence to be commenced.²⁴ The preferred position should be that of the Commonwealth, where no limitation on permitting the return of a verdict to an alternative offence exists.²⁵ The Explanatory Memorandum²⁶ for the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* (Cth) offered the following, cogent justification for no limitation periods for alternative verdicts:

203. The absence of limitation periods for industrial manslaughter and alternative verdicts could limit a defendant's right to a fair trial. This is particularly relevant to the right in Article 14(3)(c) of the ICCPR that everyone is entitled to be tried without undue delay and the principle of 'equality of arms' in Article 14(1), which requires that all parties to a proceeding must have a reasonable opportunity of presenting their case under conditions that do not disadvantage them as against other parties to the proceedings. Where no limitation period applies it could be difficult for an officer to defend themselves years after the fact. People with relevant knowledge may have moved on and evidence may be difficult to access.

204. Any limitation on the right to a fair trial arising from not applying limitation periods to the industrial manslaughter offence and alternative verdicts is justifiable because it would be necessary to pursue a legitimate objective and is reasonable, necessary and proportionate.

- A limitation period would be inappropriate for an offence as serious as industrial manslaughter. The absence of a limitation period is consistent with other manslaughter offences.

- Disapplying limitation periods in relation to alternative verdicts seeks to ensure the accused does not escape punishment on technical grounds. This would mean that if the prosecution commenced industrial manslaughter proceedings outside the limitation period that applied to, for example, a Category 2 offence (2 years after the offence first comes to the notice of the regulator or 1 year after a coronial finding – see section 232 of the WHS Act), it would not impact the ability of a court to find the accused guilty of a Category 2 offence in the alternative.

Recommendation 3:

Alternative verdicts should be introduced.

²⁴ As exists in South Australia.

²⁵ Except for ensuring that an accused has been afforded procedural fairness. This is an obligation required of a judicial officer in every trial.

²⁶ Explanatory Memorandum. *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* (Cth). [203] to [204].

Other issues raised

Deaths by suicide at work

There has always been an obligation to eliminate or minimise, so far as reasonably practicable, risks to psychological health at work, consistent with the meaning of health in the QLD WHS Act as defined in section 5:

health means physical and psychological health.

The harm from psychosocial hazards at work cannot be underestimated. Psychosocial hazards are anything that may increase the risk of psychological or physical harm, and include violence, aggression, traumatic events, and bullying.

Sadly, these are not new workplace hazards. A reflection on the well-known and tragic death of Brodie Panlock in Victoria in 2006, where Ms Panlock died by suicide following prolonged systemic bullying by work colleagues, and where some of those colleagues as well as her employer were convicted of various offences relating to failures to maintain a safe working environment were brought contrary to the *Occupational Health and Safety Act 2004* demonstrates that to be the case.²⁷ Ms Panlock's passing would likely be considered linked to a failure to eliminate or minimize risks of psychosocial hazards so far as reasonably practicable if one were to apply contemporary work health and safety phraseology.

On 1 April 2023 of the *Work Health and Safety (Psychosocial Risks) Amendment Regulation 2022* inserted Division 11 to the *Work Health and Safety Regulation 2011* ('WHS Regulation') to deal with psychosocial hazards.

The accompanying Code of Practice for Managing the risk of psychosocial hazards at work was published in 2022. The relevant provisions under sections 55A-55D of the WHS Regulation link the duty to manage psychosocial risks at work to the primary duty of care conferred by section 19 of the QLD WHS Act.

In submissions to this review, some stakeholders raised the applicability of these provisions to industrial manslaughter for deaths involving suicide.

An industrial manslaughter offence involving death by suicide within the QLD WHS Act's current framework could, in theory, be brought against a PCBU so long as there was evidence capable of proving, to the requisite standard (that is, beyond reasonable doubt) a worker who suicided did so because of the PCBU (or senior officer) causing the death through negligent conduct. There would need to be expert or specialist evidence demonstrating the causal link between the conduct and the suicide.

²⁷ Coroner's Court of Victoria, Findings with inquest of Peter White, Coroner, into the death of Brodie Rae Constance Panlock, 16 May 2008.

If amendments were made consistent with those suggested in this review regarding including a reference to a health and safety duty and removing the words “for the business or undertaking” then, again in theory, the link between a breach of a psychosocial health and safety duty owed to an individual and negligent conduct causative of death could perhaps be demonstrated more clearly. Again, this would be on the basis that there was sufficient relevant and admissible evidence capable of making the necessary findings beyond a reasonable doubt.

Definitions of “executive officer” and “senior officer”

Other concerns of stakeholders included the definitions of ‘executive officer’ and ‘senior officer’ under section 34A of the WHS Act.

Throughout the other jurisdictions that have industrial manslaughter laws, there are different definitions of “officer” and “senior officer”.

The distinction between the two is nuanced; however, the intention of parliament when it was enacted was to make workplace health and safety a *“number one priority for senior officers whose decisions can have catastrophic impacts on the safety of workers.”*²⁸

Through this lens, the differing definitions is a sensible approach to ensuring decision makers do not escape liability for their actions; however, stakeholders have raised that more discernible definitions may be needed. This concern extended to how ‘bystander’ was to be defined.

It is not intended to make recommendations regarding the officer definitions in the industrial manslaughter laws in the QLD WHS Act; the provision remains untested in a prosecution, and the other areas of the laws examined within the scope of this review warrant closer attention given recent developments in other jurisdictions, particularly regarding bystanders and alternative verdicts.

²⁸ Queensland Parliament. 2017. “Record of proceedings (Hansard).” August 22, 2017.

LIST OF ANNEXURES

LETTER	DESCRIPTION
A	List of groups invited to provide submissions
B	Letter inviting submissions from stakeholders
C	Fact Sheet: WHS duties in a contractual chain

Annexure A

Stakeholders Invited to Provide Submissions

NO.	GROUP
1	Australian Amusement, Leisure and Recreation Association Inc.
2	Australian Industry Group
3	Australian Sugar Milling Council
4	Australian Workers Union
5	Bar Association of Queensland
6	Business Chamber Queensland
7	Civil Contractors Federation of Queensland
8	Affected Persons Committee, OIR Consultative Committee for Work-related Fatalities and Serious Incidents
9	Construction Forestry Mining Energy Union
10	Department of Justice and Attorney General
11	Electrical Safety Board
12	GrowCom
13	Housing Industry Association
14	Master Builders Queensland
15	Master Electricians Queensland
16	Mining and Energy Union
17	Master Plumbers Queensland
18	National Electrical and Communications Association
19	National Retail Association
20	The Office of the Director of Public Prosecutions
21	Office of Industrial Relations
22	Queensland Council of Unions
23	Queensland Farmers' Federation
24	Queensland Law Society
25	Queensland Tourism Industry Council
26	Resources Safety & Health Queensland
27	Shop, Distributive & Allied Employees' Association (QLD Branch)
28	WorkCover Queensland

Annexure B

20 November 2023

Dear

REVIEW TO EXAMINE THE SCOPE AND APPLICATION OF INDUSTRIAL MANSLAUGHTER PROVISIONS IN THE *Work Health and Safety Act 2011* (Qld.)

I am the Work Health and Safety Prosecutor appointed pursuant to Schedule 2, Part 4 of the *Work Health and Safety Act 2011* (WHS Act).

On 17 October 2023 the Minister for Education, Minister for Industrial Relations, and Minister for Racing, the Hon. Grace Grace MP requested me to undertake a review consistent with recommendation 31 of the 2022 Review of the Work Health and Safety Act 2011 to examine the scope and application of the industrial manslaughter provisions to determine if amendments are warranted.

The Minister requested I report to her on 2 February 2024.

I am writing to invite the _____ to make a submission to my review.

Industrial Manslaughter

Industrial manslaughter is a crime contrary to Part 2A of the WHS Act. The part relevantly sets out:

Industrial manslaughter

34A

Definitions for part

(1) In this part—

conduct means an act or omission to perform an act.

executive officer, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

senior officer, of a person conducting a business or undertaking, means—

(a) if the person is a corporation—an executive officer of the corporation; or

(b) otherwise—the holder of an executive position (however described) in relation to the person who makes, or takes part in making, decisions affecting all, or a substantial part, of the person's functions.

(2) For this part, a person's conduct causes death if it substantially contributes to the death.

(3) For this part, a reference to a worker carrying out work for a business or undertaking includes a reference to a worker who is at a workplace to carry out work for the business or undertaking, including during a work break.

34B

Exceptions

(1) A volunteer does not commit an offence under this part.

(2) Despite section 34(2), a senior officer of an unincorporated association (other than a volunteer) may commit an offence under this part.

(3) The Criminal Code, section 23 does not apply to an offence under this part.

34C

Industrial manslaughter—person conducting business or undertaking

(1) A person conducting a business or undertaking commits an offence if—

(a) a worker—

(i) dies in the course of carrying out work for the business or undertaking; or

(ii) is injured in the course of carrying out work for the business or undertaking and later dies; and

(b) the person's conduct causes the death of the worker; and

(c) the person is negligent about causing the death of the worker by the conduct.

Maximum penalty—

(a) for an individual—20 years imprisonment; or

(b) for a body corporate—100,000 penalty units.

Note—

See section 244 or 251 in relation to imputing to a body corporate or public authority particular conduct of employees, agents or officers of the body corporate or public authority.

(2) An offence against subsection (1) is a crime.

34D

Industrial manslaughter—senior officer

(1) A senior officer of a person who carries out a business or undertaking commits an offence if—

(a) a worker—

(i) dies in the course of carrying out work for the business or undertaking; or

(ii) is injured in the course of carrying out work for the business or undertaking and later dies; and

(b) the senior officer's conduct causes the death of the worker; and

(c) the senior officer is negligent about causing the death of the worker by the conduct.

Maximum penalty—20 years imprisonment.

(2) An offence against subsection (1) is a crime.

Terms of reference - Recommendation 31 of the 2022 Review of the WHS Act

Recommendation 31 of the 2022 Review of the WHS Act states:

- That the Minister consider establishing a review to examine the scope and application of the industrial manslaughter provisions to determine if amendments are warranted.

Scope

The scope of my review is:

- The structure and scope of the current crime of industrial manslaughter in Part 2A of the Work Health and Safety Act 2011 (WHS Act).
- Comparison between the crime in Queensland, and other jurisdictions in Australia that have introduced industrial manslaughter laws subsequent to Queensland's laws coming into effect.
- Whether any amendments to Part 2A of the WHS Act are warranted including:
 - Amendments to Part 2A to capture the death of bystanders at a workplace, in addition to workers.
 - Whether the crime currently captures the actions of principal contractors subcontractors, developers or procurers of services who engage workers at a workplace, or if amendment is necessary to clarify or capture the duties of those persons.
- Whether alternatives to the crime should be included, similar to alternative verdicts available for specific crimes in the Criminal Code 1886.

Invitation to make submissions

I invite you to provide written submissions on the following:

- Whether any amendments to Part 2A of the WHS Act are warranted including:
 - Amendments to Part 2A to capture the death of bystanders at a workplace, in addition to workers.
 - Whether the crime currently captures the actions of principal contractors subcontractors, developers or procurers of services who engage workers at a workplace, or if amendment is necessary to clarify or capture the duties of those persons.
- Whether alternatives to the crime should be included, similar to alternative verdicts available for specific crimes in the Criminal Code 1886.

You may also wish to raise with me any other relevant matter relating to the overall effectiveness (or otherwise) of the industrial manslaughter provisions in the WHS Act.

Submissions should be supported by evidence and information, which may include case studies, supporting data, and relevant research.

Submissions will be treated as confidential. Any submissions referenced in my final report to the Minister will be de-identified.

Time to make submissions

Submissions to my review are open from **21 November 2023 until close of business 21 December 2023.**

Submissions may be sent by letter or by email (in Word or PDF format) to the following address:

Simon Nicholson
Work Health and Safety Prosecutor
GPO Box 69
Brisbane 4005

Email: enquiries@owhsp.qld.gov.au

Email submissions are preferred. Please ensure you use "Submission to the Review of Industrial Manslaughter Provisions in Queensland" in the subject line.

Yours faithfully,

Simon Nicholson
Work Health and Safety Prosecutor

• WHS duties in a contractual chain

This fact sheet is for persons conducting a business or undertaking (PCBUs) who are working as part of a contractual chain.

It provides guidance on duties under the model work health and safety (WHS) laws and examples of how contractual relationships fit within the model WHS framework. This includes individual contractors and self-employed persons, who may be both a PCBU and a worker in a contractual chain.

Key points to remember are:

- WHS duties are not transferrable.
- WHS duties cannot be contracted out to another party, such as a subcontractor.
- A person can have more than one duty under the model WHS laws. For example, a self-employed person may be simultaneously a PCBU and a worker.
- Duties can be shared, so more than one person can have the same duty at the same time. For example:
 - A contractor and subcontractors, as PCBUs, will have the same duty to ensure access to first aid facilities at a workplace.
- You must consult, cooperate and coordinate on WHS matters with other duty holders when working as part of a contractual chain.

For clarity, a **worker** is anyone who carries out work in any capacity for your business or undertaking, including employees, contractors, subcontractors, apprentices and trainees.

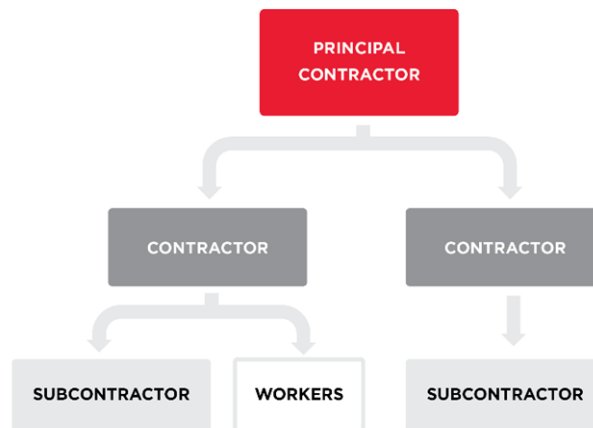
A **workplace** means a place where work is carried out for your business or undertaking and includes any place where a worker goes, or is likely to be, while at work.

1. What is a contractual chain?

Contracting is when a business engages another business to carry out work under contract.

A **contractual chain** refers to the situation where, in relation to the same project or work matter, there are multiple contractors and subcontractors. There can be several levels in a contractual chain. For example, a client may engage a head contractor to deliver a logistics project. The head contractor may engage contractors to undertake parts of the project, and these contractors may engage subcontractors to carry out particular activities that the contractor is to deliver.

Figure 1: Example of a contractual chain for a construction project



A contractual chain can form in any industry but is a common way of conducting business across the economy, for example in industries such as building and construction, road transport and events management.

It is good practice to understand if you are part of a contractual chain as it will help you understand who you may owe WHS duties to and who may owe you a duty of care and allow for necessary consultation about these duties.

Duties under WHS laws

• Person conducting a business or undertaking

The primary duty holder under the model WHS laws is a PCBU. The term PCBU covers a broad range of modern work relationships and business structures. A PCBU can be an employer, a sole trader, self-employed person, company or corporation, association or government.

As a PCBU you have a duty under WHS laws to ensure the health and safety of workers and others who may be at risk from work carried out at the workplace. You must:

- eliminate risks so far as is reasonably practicable, or if this is not possible, minimise risks so far as is reasonably practicable
- provide and maintain a work environment that is without risk to the health and safety of workers
- provide adequate and accessible facilities for the welfare of workers to carry out their work, and
- give workers the necessary information, instruction, training or supervision to do their job safely and without risks to health.

PCBUs may also have other duties in addition to their primary duty of care. This includes duties relating to the management and control of workplaces, duties relating to the design, manufacture and import of plant and substances, duties to consult, and duties that apply to principal contractors on construction projects that involve construction work of \$250,000 or more.

For more information about who may be a PCBU and their duties see: [What is a person conducting a business or undertaking](#) and [Duties of a PCBU](#).

Reasonably practicable standard

As a PCBU, the standard you must meet to fulfil your WHS duties is to do what is 'reasonably practicable' to ensure the health and safety of workers and others. You must first try and eliminate risks to health and safety, so far as is reasonably practicable. If that is not possible, you must minimise the risks so far as is reasonably practicable.

What is reasonably practicable is an objective test. This means that you must meet the standard of behaviour expected of a reasonable person in your (the duty holder's) position and who is required to comply with the same duty.

To identify what is (or was) reasonably practicable, all relevant matters must be taken into account and weighed up and a balance achieved that will provide the highest level of protection that is both possible and reasonable in the circumstances. The model WHS Act sets out the issues you must, at minimum, consider:

- the likelihood of the hazard or risk occurring
- the degree of harm from the hazard or risk
- knowledge about ways of eliminating or minimising the hazard or risk
- the availability and suitability of ways to eliminate or minimise the risk, and
- cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

A risk management approach can help you determine what is reasonably practicable. You can find more information about this process in the [Code of Practice: How to manage work health and safety risks](#).

You can find more information about what is reasonably practicable in [How to determine what is reasonably practicable to meet a health and safety duty](#).

• Workers

Workers also have duties under WHS laws. Workers must take reasonable care of their own health and safety in the workplace and the health and safety of others who may be affected by what they do or do not do. Workers must also comply with any reasonable WHS instructions given by the PCBU and cooperate with the PCBU's WHS policies and procedures that have been notified to workers.

2. Who has PCBU duties in a contractual chain?

Depending on the situation, WHS duties may be owed by different PCBUs in a contractual chain including:

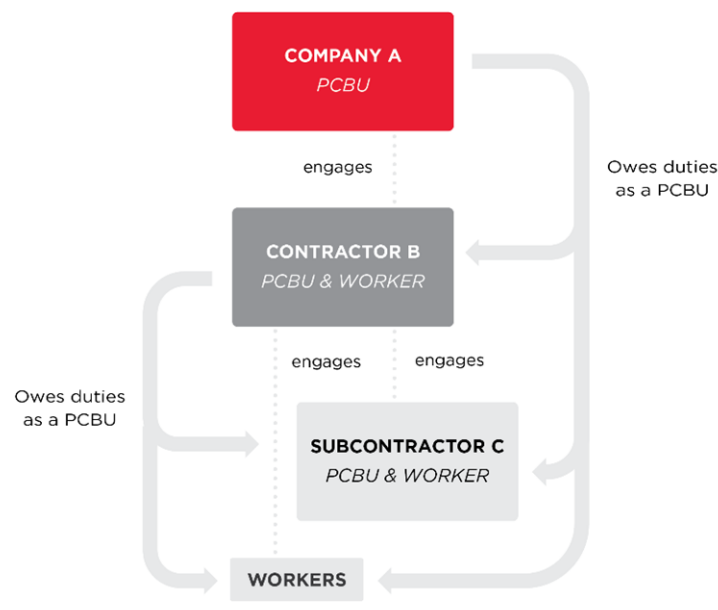
- a PCBU that engages a person or another PCBU to carry out work
- a PCBU that causes a worker to be engaged (e.g. through a subcontractor arrangement) or directs or influences their work
- a PCBU that manages or controls a workplace in which the work will take place
- a PCBU that is carrying out other work in the workplace that may affect the health and safety of those nearby.

Put simply, there does not need to be a direct contractual relationship between the PCBU and a worker lower down the chain in order for the PCBU to owe WHS duties to that worker.

WHS duties are not transferrable. Duties cannot be contracted out to another party in the contractual chain, such as a subcontractor.

You may also share the same WHS duties with another PCBU, such as a requirement to notify the WHS regulator of a notifiable incident (the death of a person, a serious injury or illness or a dangerous incident) where the incident arises out of the conduct of your business, even if it may also involve another business. You must notify the WHS regulator immediately after becoming aware the incident happened. You can find more information in the [Incident notification information sheet](#).

Figure 2: Example of who may owe duties as a PCBU in a contractual chain



Individual contractor can be both a PCBU and a worker

In a contractual chain, an individual contractor (e.g. sole trader) will be both a PCBU and a worker. An individual contractor is a worker when engaged by a PCBU to perform work for it. For example, an owner truck driver contracted by a road logistics company to deliver goods from a retailer to customers.

PCBUs higher up the contractual chain will also owe a duty of care to the individual contractor as a worker if they caused the individual contractor to be engaged, or they influence or direct the individual contractor's activities.

This means in a contractual chain an individual contractor may be a worker for multiple PCBUs. The individual contractor will owe a duty of care as a worker in relation to the work they carry out for PCBUs above them in the contractual chain.

At the same time, the individual contractor is a PCBU themselves as they are conducting a business as a sole trader (i.e. contracting their services to deliver the goods). As a PCBU they will have a duty to ensure, so far as is reasonably practicable, the health and safety of workers of any subcontractors they engage in the contractual chain (as well as any workers they engage). They also have a duty to ensure their own health and safety (while at work in their own business).

The key point to remember is that an individual contractor can be a worker and be owed a duty by all businesses further up the chain, and at the same time owe duties as a PCBU to themselves (while at work in their own business) and to other workers further down the chain.

Self-employed persons

If you are self-employed you are a PCBU and have the primary duty of care for your own safety (while at work in your own business) and the safety of others. If a self-employed person is working for another PCBU (e.g. a self-employed welder who is contracted by a labour hire company), they are also a worker of that PCBU. For example, the self-employed welder must ensure, so far as is reasonably practicable, that the health and safety of workers and other people are not put at risk by their work. They also owe PCBU duties to any workers and subcontractors they hire. The self-employed welder must consult, cooperate and coordinate, so far as is reasonably practicable, with other contractors and the labour hire company to manage health and safety risks at the workplace.

Case study – School refurbishment

EM Construction has been engaged to undertake the refurbishment of a local school by the Department of Education. The project is valued at \$500,000.

The Department of Education (as part of the State of NSW) is a PCBU and has obligations under the WHS Act to ensure the safety of its workers, including contractors it engages or whose work the Department influences or directs, so far as is reasonably practicable.

The Department has appointed EM Construction Pty Ltd as the Principal Contractor for the construction project. EM Construction is responsible for the management of day-to-day safety, including management of contractors, for the project. As the Principal Contractor, EM Construction must ensure that signs are installed outside the workplace which show their name and contract details and prepare and inform workers of the written WHS management plan for the workplace.

The Department tells EM Construction that it can make decisions on engaging contractors as needed and without consulting with the Department, since EM Construction will have day-to-day responsibility for the project. The Department establishes oversight arrangements which include regular project meetings and discussions on WHS issues.

EM Construction has duties as both a PCBU undertaking construction work and as the Principal Contractor managing the construction project.

All independent contractors engaged by EM Construction are PCBUs and their duties include:

- managing all WHS risks arising from their work so far as is reasonably practicable
- consulting, cooperating and coordinating with the Principal Contractor and other independent contractors about WHS matters
- being aware of the WHS management plan and complying with any site safety rules issued by the Principal Contractor.

All independent contractors engaged or caused to be engaged, or whose work is influenced or directed by EM Construction, are workers of EM Construction (the Principal Contractor).

EM Construction and all independent contractors owe obligations to each other and other people whose safety can be impacted by their work.

Scenarios based on case study

Independent Contractor 1 – Archie's Kitchens Pty Ltd

EM Construction engages Archie's Kitchens Pty Ltd to install a new kitchen in the school.

Archie's Kitchens is a PCBU and has a primary duty to ensure the health and safety of its workers (including its subcontractors) and that others are not put at risk from its work so far as is reasonably practicable.

Archie's Kitchens workers are also EM Construction workers. EM Construction owes duties to these workers as it caused the workers to be engaged when it contracted with Archie's Kitchens to perform the kitchen work. EM Construction must ensure, so far as is reasonably practicable, the health and safety of Archie's Kitchens workers and consult about WHS matters that affect them.

Archie's Kitchens workers must take reasonable care for their own safety and take reasonable care that they do not put the health and safety of others at risk, such as keeping the work area free from trip and slip hazards.

Independent Contractor 2 - SIM Plumbing and Electrical Pty Ltd

Archie's Kitchens consults with EM Construction about subcontracting some of the project to another business as it does not have the expertise to carry out plumbing and electrical work. EM Construction agrees. As a result, SIM Plumbing and Electrical Pty Ltd (SIM) is subcontracted by Archie's Kitchens to do the plumbing and electrical work for the kitchen installation.

SIM is a PCBU and has a primary duty to ensure the health and safety of its workers (including any subcontractors) and that others are not put at risk from its work so far as is reasonably practicable.

SIM workers are also Archie's Kitchens workers as they were caused to be engaged by Archie's Kitchens to perform the plumbing and electrical work. Archie's Kitchens must take all reasonably practicable steps to ensure the health and safety of SIM workers, for example managing the risk of exposure to dust during cabinet installation.

SIM workers are also EM Construction workers because they were caused to be engaged by EM Construction, who agreed that Archie's Kitchens should engage SIM to perform part of the refurbishment work. EM Construction must ensure the health and safety of SIM workers and consult about WHS matters that affect them.

SIM workers must take reasonable care for their own safety and must take reasonable care that they do not put the health and safety of others at risk from their work.

Sole trader – Star Tiling

EM Construction engages Star Tiling to replace tiles in a bathroom at the school. Star Tiling is the registered business name of Joe Star, a sole trader.

Joe Star (trading as Star Tiling) is a PCBU and has a primary duty to ensure the health and safety of his workers (including any apprentices or contractors he engages) and that the health and safety of others is not put at risk by the work of his business so far as is reasonably practicable.

Joe Star is also carrying out work in his business. He must ensure his own health and safety while at work so far as is reasonably practicable.

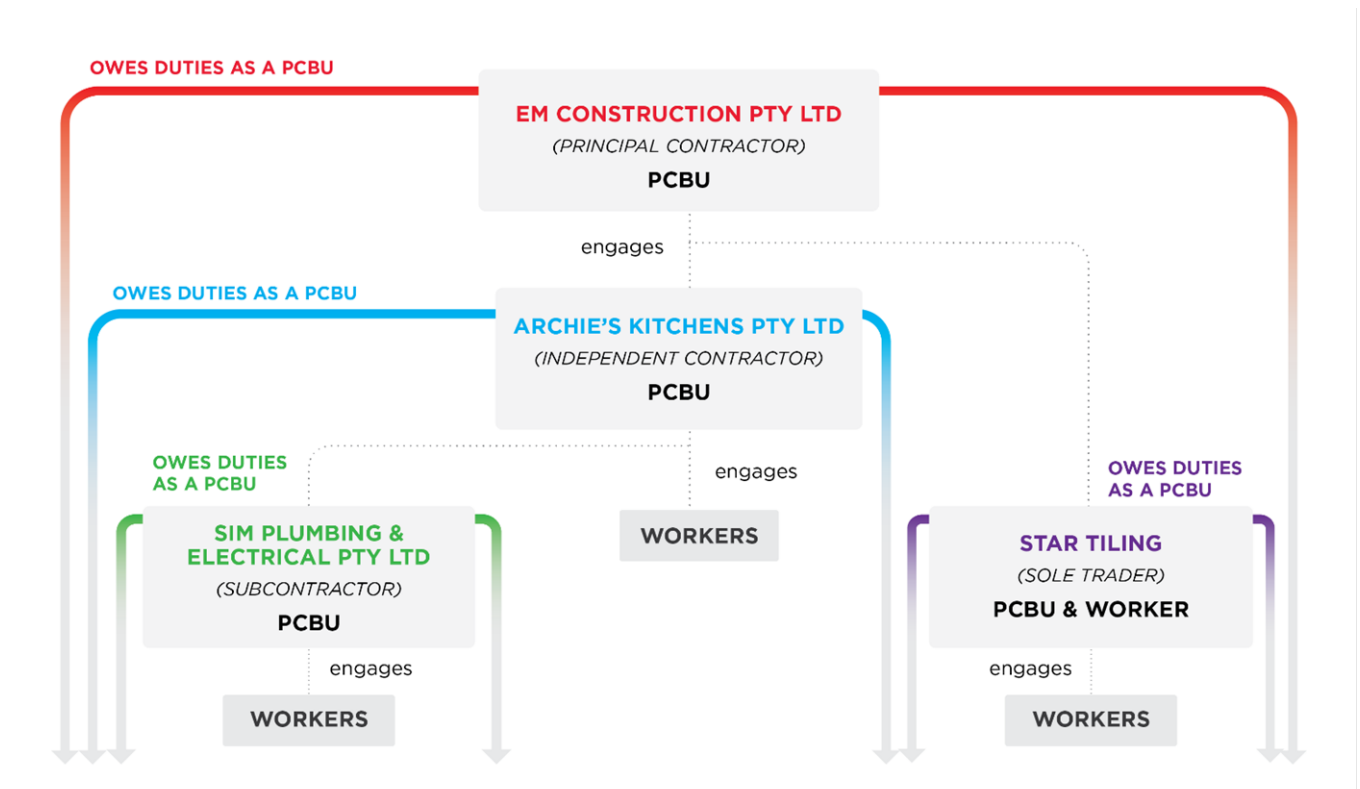
Star Tiling workers are also EM Construction workers because they were caused to be engaged by EM Construction to perform the tiling work. EM Construction must ensure the health and safety of Star Tiling workers and consult about safety matters that impact on them.

Star Tiling workers are not Archie's Kitchens workers as they are not engaged, or caused to be engaged, by Archie's Kitchens and their work is not influenced or directed by them.

Star Tiling workers must take reasonable care for their own safety and must take reasonable care that they do not put the health and safety of others at risk from their work.

Figure 3: Duties owed by EM Construction and contractors that sit beneath it in the contractual chain

(*This diagram follows on from the case study and scenarios on pages 5-6)



Working with other PCBUs and shared WHS duties

In a contractual chain there will be multiple PCBUs who share the same WHS duties. PCBUs who share duties must each discharge their duty to the extent to which they have the capacity to influence and control the matter (whether that matter is a work activity, workers or the workplace).

The PCBU with the most influence and control over a matter will be in the best position to manage the associated risks. Determining which person or persons have the capacity to influence and control the work depends on the circumstances at the time. For example, at a housing construction site, subcontractors have some capacity to directly manage the risks associated with their own work and the activities of any worker they engage to carry out the work. The head contractor will also be able to influence and control the way work is carried out, and how risks are managed, by coordinating and monitoring the work and ensuring risk control measures are implemented.

PCBUs at the top of the contractual chain can build work health and safety into contractual management and take the lead in coordinating work health and safety practices down the chain. These PCBUs have important responsibilities in seeking assurance that systems to ensure worker safety are in place along the contractual chain and are functioning effectively. For example, although a head contractor may not be present on a housing construction site, they must still ensure the work is being carried out safely. The head contractor should check the subcontractor's work procedures. The principal contractor (for construction projects over \$250,000) must obtain any safe work method statements (for high-risk construction work) to ensure risks associated with the proposed work are addressed, and then visit the site as necessary to verify the work is being carried out safely.

PCBUs, regardless of their place in a contractual chain, have a duty to consult, cooperate and coordinate activities with all other PCBUs who they share a duty with, so far as is reasonably practicable. This helps avoid unnecessary duplication of activities, prevent gaps in managing health and safety risks and ensure that everyone's WHS duties are met.

For example, a building manager and a business renting office space in the building, as PCBUs, will have the same duty to ensure toilet facilities are maintained at the workplace. It may not be practical or necessary for both

PCBUs to maintain the toilet facilities, so they may arrange for only one of them to maintain the toilet facilities. In doing this and confirming the maintenance arrangements are in place and accessible to workers, each PCBU has ensured compliance with their duty.

PCBUs who share the same WHS duties must satisfy themselves there are safe systems of work in place that ensures worker safety and that these systems are functioning and are maintained. You should consider:

- planning ahead by thinking through every stage of the work
- thinking about how work carried out as part of the conduct of your business or undertaking could affect the work carried out by other PCBUs
- identifying risks at the workplace that need to be managed
- consulting with other PCBUs to agree on how risks will be managed and who is best placed to manage each risk, and
- clearly defining roles, responsibilities and actions.

PCBUs can enter into agreements with other PCBUs to make sure duties are met so long as it does not limit or modify their WHS obligations. It is good practice to make a record of any consultation or discussions you have and agreements you reach around how work will be carried out.

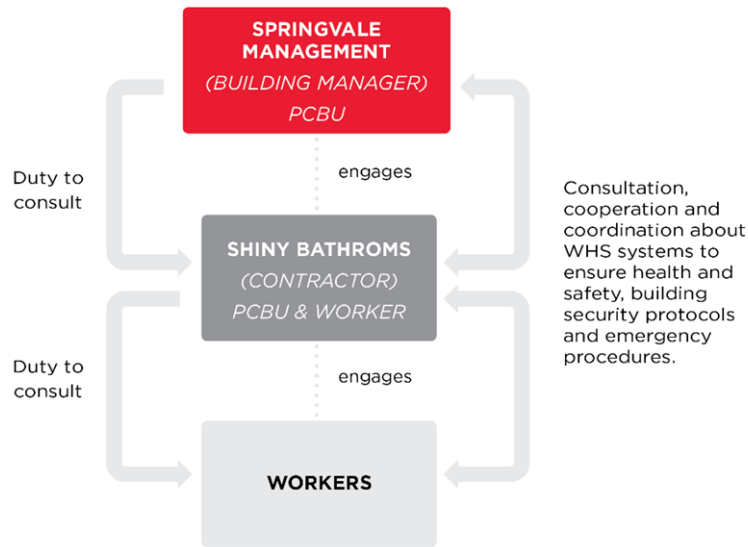
Case study – Working with other PCBUs

Springvale Management manages an office building. They contract out general office cleaning, including toilets and kitchen facilities to Shiny Bathrooms which is to be undertaken out of office hours on certain days. Springvale does not have direct control or influence over how Shiny will carry out the work, as they do not specify how cleaning is to be done and do not provide any equipment or chemicals to Shiny to use.

Springvale consults with Shiny to satisfy themselves that Shiny have adequate systems in place to ensure the health and safety of workers. Shiny cooperates with Springvale to verify that its workers have been trained in the use of the chemicals used for cleaning and are provided with personal protective equipment.

Workers of Shiny Bathrooms will work by themselves in the office building late at night. As Springvale has control and management of the office building, Shiny consults with Springvale to satisfy themselves of the security processes in place. Shiny cooperates with Springvale to make sure its workers are aware of and follow security processes – for example, to ensure that Shiny's workers have access to the office carpark after hours which is secured with good lighting and easy access to the goods lift. They also coordinate to ensure workers are provided with security passes and are trained in security protocols and emergency procedures.

Figure 4: Working with other PCBU



3. Consultation with workers

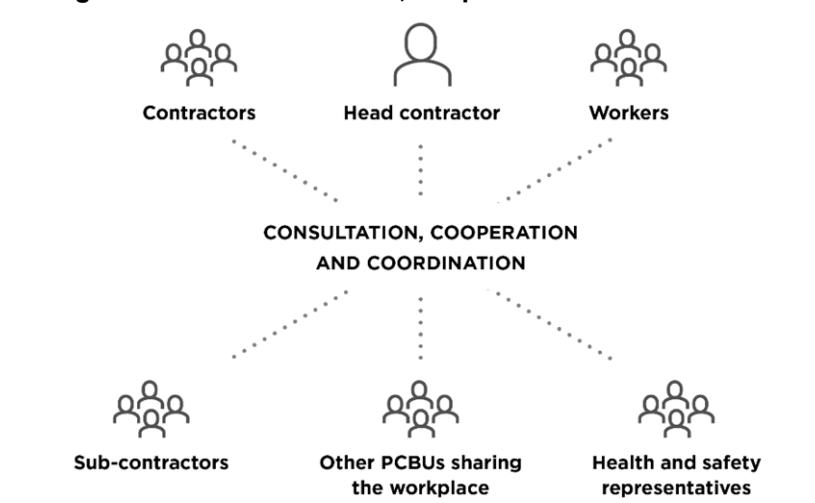
PCBUs have a duty to consult with workers on WHS. Consultation is a two-way process between you and your workers to identify WHS issues, share views and information, participate in decision-making on health and safety matters and receive feedback on outcomes. If workers are represented by a health and safety representative, the consultation must involve that representative.

Each PCBU in the contractual chain must, so far as is reasonably practicable, consult with workers (and their representatives) who carry out work for them in the contractual chain. This includes giving workers a reasonable opportunity to express their views or raise issues about work health and safety at the workplace. Consultation should be done in a way that is accessible and can be understood by everyone, for example people who are culturally or linguistically diverse.

A PCBU must take into account the views of workers (and their representatives) and advise them of the outcome of the consultation.

For more information on consultation, cooperation and coordination see the [Code of Practice: Work health and safety consultation cooperation and coordination](#).

Figure 5: WHS consultation, cooperation and coordination



Consolidated bibliography

Legislation

Crimes Act 1900 (ACT)

Criminal Code Act 1899 (QLD)

Criminal Code Act 1924 (TAS)

Fair Work Legislation Amendment (Closing Loopholes) Act 2023 (CTH)

Occupational Health and Safety Act 2004 (VIC)

Penalty Units Regulations 2010 (NT)

Work Health and Safety Amendment (Industrial Manslaughter) Bill 2021 (NSW)

Work Health and Safety (Psychosocial Risks) Amendment Regulation 2022 (QLD)

Work Health and Safety and Other Legislation Amendment Bill 2023 (QLD)

Work Health and Safety (Industrial Manslaughter) Amendment Bill 2023 (SA)

Work Health and Safety Act 2011 (CTH)

Work Health and Safety Act 2011 (QLD)

Work Health and Safety Act 2011 (NSW)

Work Health and Safety (National Uniform Legislation) Act 2011 (NT)

Work Health and Safety Act 2012 (SA)

Work Health and Safety Act 2020 (WA)

Work Health and Safety Regulation 2011 (QLD)

Cases

Baiada Poultry Pty Ltd v R (2012) 246 CLR 92

R v Brisbane Auto Recycling Pty Ltd & Ors (2020) 296 IR 327; [2020] QDC 113

R v Jeffrey Owen [2022] QDCSR 168

R v Knutsen [1963] Qd R 157

R v MBX [2014] 1 Qd R 438; [2013] QCA 214

Publications

Boland, M (2018) Review of the model Work Health and Safety laws – Final Report.

<https://www.safeworkaustralia.gov.au/doc/review-model-whs-laws-final-report>

Coroner's Court of Victoria, Findings without inquest of State Coroner Judge Sara Hinchey into the deaths of Bridget Louise Jones, Alexander David Jones, Marie-Faith Chantal Abia Fiawoo, 4 June 2018.

Coroner's Court of Victoria, Findings with inquest of Peter White, Coroner, into the death of Brodie Rae Constance Panlock, 16 May 2008. Explanatory Memorandum, *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* (Cth).

Lyons, T (2017) *Best practice review of Workplace Health and Safety Queensland*.

https://www.worksafe.qld.gov.au/_data/assets/pdf_file/0011/22322/best-practice-review-of-whsq-final-report.pdf

Minister for Work Health and Safety. Published 19 October 2023. <https://www.nsw.gov.au/media-releases/industrial-manslaughter-law-to-be-introduced-nsw>

Queensland Parliament. 2017. "Record of proceedings (Hansard)." August 22, 2017.

<https://www.parliament.qld.gov.au/Work-of-the-Assembly/Sitting-Dates/Dates/Sitting-Date?date=2017-08-22>

SafeWork Australia (2022) WHS duties in a contractual chain: Factsheet

<https://www.safeworkaustralia.gov.au/doc/whs-duties-contractual-chain-factsheet> .

Senate Education and Employment References Committee, Parliament of Australia, *They never came home – the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia* (2018).

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/IndustrialDeathsInAus/report

Wood, S (2022) *Review of recent corporate manslaughter cases: Deco-Pak, Bosley Mill, Aster Healthcare*. <https://www.kingsleynapley.co.uk/insights/blogs/criminal-law-blog/review-of-recent-corporate-manslaughter-cases-deco-pak-bosley-mill-aster-healthcare>